

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

REGENCY COURT, L.L.C.,

Plaintiff,

vs.

CHARMING CHARLIE BIG RED, LLC and
CHARMING CHARLIE BRANDS, INC.,

Defendants.

CASE NO.: _____

**NOTICE OF
REMOVAL OF CIVIL ACTION**

Defendants Charming Charlie Big Red, LLC and Charming Charlie Brands, Inc. ("Defendants" or "Charming Charlie") files this Notice of Removal of Civil Action brought against it by Plaintiff Regency Court, L.L.C. ("Plaintiff" or "Regency"). The grounds in support of this Notice of Removal are as follows:

1. **Procedural Background.** On March 7, 2022, Plaintiff filed its Original Complaint for Forcible Entry and Detainer and Damages (the "Complaint") against Defendants in the District Court for Douglas County, Nebraska, under Case No. CI-22-1633 (the "State Court Action"). A true and correct copy of Plaintiff's Complaint is attached as **Exhibit A**. In the Complaint, Plaintiff asserts claims against Defendants. Plaintiff alleges claims for Forcible Entry and Detainer, Breach of Lease, Conversion, Unjust Enrichment and Breach of Guaranty surrounding a Lease Agreement entered into by Plaintiffs and Defendant Charming Charlie Big Red, LLC on November 1, 2021.

2. Defendant was served with or otherwise received a copy of the Complaint on March 7, 2022. A true and correct copy of the email transmitting the Complaint to Defendants general counsel is attached hereto as **Exhibit B**.

3. **This Notice is Timely Pursuant to 28 U.S.C. § 1446(b)(1).** This Notice of Removal of Civil Action is being filed prior to the expiration of the thirty (30) day period after receipt by the Defendants, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

4. **Jurisdiction.** Removal is proper as there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Therefore, this is a civil action in which the district courts of the United States have original diversity jurisdiction pursuant to 28 U.S.C. § 1332 and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

5. Specifically, Plaintiff Regency Court, L.L.C. is a Nebraska limited liability company with its principal place of business in Nebraska.

6. Defendant Charming Charlie Big Red is a Delaware limited liability company with its principal place of business in Houston, Texas. Defendant Charming Charlie Brands, Inc. is a Delaware corporation with its principal place of business in Houston, Texas.

7. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, in that the Plaintiff seeks damages in excess of \$200,000.00 which is greater than the minimum jurisdictional requirements of 28 U.S.C. § 1332.

8. **Notice Filed in the State Court.** Promptly after filing this Notice of Removal, Defendants will provide written notice of removal to Plaintiff and will file a copy of this Notice of Removal with the Clerk for the District Court for Douglas County, Nebraska as provided by law. A true and correct copy of the Notice being filed with the Clerk of the District Court for Douglas County, Nebraska is attached hereto as **Exhibit C.**

9. **Jury Demand.** Plaintiff has not demanded a jury in the state court action.

10. **Consent.** All Defendants have consented to this removal.

11. By filing this Notice of Removal, Defendants do not waive any defense that may be available.

WHEREFORE, for the reasons stated above, this action is removable to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 under this Court's diversity jurisdiction.

Dated this 6th day of April, 2022.

Respectfully submitted,
HENDERSHOT COWART, P.C.

BY: /s/ SIMON W. HENDERSHOT, III
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BY: /s/ JOEL M. CARNEY
JOEL M. CARNEY, #21922
Goosmann Law Firm, PLC
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17838 Burke Street
Omaha, NE 68118
Telephone: (402) 280-7648
Email: CarneyJ@GoosmannLaw.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2022, I electronically filed the foregoing Notice of Removal of Civil Action with the Clerk of Court for the U.S. District Court, District of Nebraska using the electronic case filing system of the court, and served a true and correct copy of this document on the following attorneys of record as indicated below:

Michael T. Eversden
Lauren R. Goodman
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
Omaha, Nebraska 68102
Email: meversden@mcgrathnorth.com
lgoodman@mcgrathnorth.com

/s/ Simon W. Hendershot, III
SIMON W. HENDERSHOT, III

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI220001633

Transaction ID: 0018063078

Filing Date: 03/07/2022 01:10:13 PM CST

IN THE DISTRICT COURT FOR DOUGLAS COUNTY, NEBRASKA

REGENCY COURT, L.L.C.,

CASE NO.

Plaintiff,

)

vs.

)

CHARMING CHARLIE BIG RED, LLC, a

)

Delaware limited liability company;

)

CHARMING CHARLIE BRANDS, INC.

)

a Delaware corporation,

)

**COMPLAINT FOR FORCIBLE
ENTRY AND DETAINER AND
DAMAGES**

Defendants.

Plaintiff, Regency Court, L.L.C., states as follows for its Complaint against CCBR, LLC:

PARTIES

1. Plaintiff Regency Court, L.L.C. ("Regency") is a Nebraska limited liability company doing business in Omaha, Douglas County, Nebraska.
2. Defendant Charming Charlie Big Red, LLC ("CCBR") is a Delaware limited liability company with leased property in Omaha, Douglas County, Nebraska.
3. Defendant Charming Charlie Brands, Inc. ("Guarantor") is a Delaware corporation with leased property in Omaha, Douglas County, Nebraska.

JURISDICTION AND VENUE

4. Venue is proper in this Court under Nebraska Revised Statute § 25-403.01 because the cause of action arose in Douglas County, Nebraska.
5. This Court has jurisdiction over this matter under Nebraska Revised Statute § 25-536.

GENERAL ALLEGATIONS

6. Regency manages real property located at 120 Regency Court, Suite 154, Omaha,



Douglas County, Nebraska (the “Premises”). At all relevant times, Regency has maintained the Premises as a commercial retail space.

7. CCBR has possession of the Premises owned by Regency under a Lease Agreement executed by Regency and CCBR on or about November 1, 2021 (the “Lease”).

8. Contemporaneously with the execution of the Lease, Guarantor executed a Lease Guaranty (“Guaranty”) in favor of Regency, wherein Guarantor guaranteed all obligations owed by CCBR under the Lease.

9. CCBR is in default of its obligations under the Lease. In particular, CCBR abandoned the Premises and failed to open by the date required by the Lease. Moreover, CCBR obtained a \$200,000 construction allowance from Regency and failed to use any of the funds to build out the Premises or establish a store, as required by the Lease. CCBR currently owes Regency in excess of \$225,554.03, plus interest.

10. On February 25, 2022, a three-day Notice to Quit was served on CCBR pursuant to Nebraska Statutes. A copy of the Notice to Quit is attached hereto as Exhibit “A” and incorporated herein by this reference.

11. As of March 7, 2022, CCBR has failed to vacate the premises.

12. In addition to failing to vacate the Premises, CCBR has failed to pay amounts owed to the Regency.

13. Notwithstanding its failure to pay amounts owed, CCBR has wrongfully remained in possession of the Premises.

14. To date and after notice of CCBR’s default, Guarantor has also failed to tender full payment as required by the terms of the Guaranty.

FIRST CAUSE OF ACTION
Forcible Entry and Detainer

15. Regency incorporates the preceding paragraphs as if fully set forth herein.
16. CCBR has failed to build out the Premises and failed to open a store by the date required by the Lease, thereby breaching the Lease.
17. Despite this breach, CCBR wrongfully remains in possession of the Premises.
18. CCBR has willfully and wrongfully retained possession of the Premises after peaceably and lawfully entering it.
19. Regency is entitled to immediate possession of the Premises.

SECOND CAUSE OF ACTION
Breach of Lease

20. Regency incorporates the preceding paragraphs as if fully set forth herein.
21. CCBR has abandoned the Premises, failed to use the \$200,000 advance from Regency to build out the Premises or establish a store, and failed to open a store by the date required under the Lease.
22. Regency is therefore entitled to recover the advance, along with other amounts owed under the Lease that have not been paid.
23. To the extent there is any damage to the Premises beyond normal wear and tear, CCBR is also liable to Regency for those damages.

THIRD CAUSE OF ACTION
Conversion

24. Regency incorporates the preceding paragraphs as if fully set forth herein.
25. Regency made an advance to CCBR for the purpose of building out the Premises and establishing a store there.

26. CCBR received the advance, failed and refused to use the advance for the purpose required under the Lease, and exercised dominion over the advanced funds.
27. CCBR has deprived Regency of the use of the advanced funds.
28. CCBR has thus caused damages to Regency in the amount of the advance and other amounts owed pursuant to the Lease.

FOURTH CAUSE OF ACTION
Unjust Enrichment

29. Regency incorporates the preceding paragraphs as if fully set forth herein.
30. CCBR received the benefit of the advance at Regency's expense.
31. The circumstances surrounding the advance make it unjust for CCBR to retain the benefit of the advance, given that the advance was specifically for the purpose of building out the Premises and establishing a store, but CCBR has not used any of those funds for that purpose.

FIFTH CAUSE OF ACTION
Breach of Guaranty

32. Regency incorporates the preceding paragraphs as if fully set forth herein.
33. Guarantor executed a Guaranty in favor of Regency.
34. In that Guaranty, Guarantor guaranteed CCBR's performance and all of its obligations under the Lease.
35. Guarantor's guarantee of CCBR's performance and obligations was a condition of and consideration for Regency's agreement to lease the Premises to CCBR.

36. CCBR defaulted on the Lease by abandoning the Premises, failing to use the \$200,000 advance by Regency to build out the Premises and establish a store, and failing to open a store by the date required under the Lease.

37. Regency has demanded payment of the amounts owed from CCBR but it has failed to vacate the Premises and to pay the amounts owed.

38. Guarantor has breached the terms of the Guaranty by failing to pay all amounts owed by CCBR.

39. Regency is entitled to judgment against Guarantor for the full amount owed by CCBR.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an Order for:

- (1) Possession of said property pursuant to its First Cause of Action; and
- (2) Judgment against CCBR for the amount of Regency's advance to CCBR as well as any additional amounts owed under the Lease, and any amounts owed for damage to the Premises;
- (3) Judgment against CCBR for conversion of the advance, along with all other damages resulting from such conversion;
- (4) Judgment against CCBR on Regency's unjust-enrichment claim;
- (7) Pre-judgment and post-judgment interest as allowed by law, costs and any other relief the Court may deem just and equitable;
- (6) Judgment against CCBI for all obligations owed by CCBR to Regency, including pre-judgment and post-judgment interest as allowed by law, costs, and any other relief the Court may deem just and equitable.

Dated this ____ day of March 2022.

REGENCY COURT, L.L.C., Plaintiff

By:/s/ Michael T. Eversden

Michael T. Eversden (21941)
Lauren R. Goodman (24645)
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, Nebraska 68102
(402) 341-3070
(402) 341-0216 fax
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ATTORNEY FOR PLAINTIFF

From: [Eversden, Michael](#)
To: [Trey Hendershot](#)
Cc: [Katie Cowart](#); [Karina Garza](#); [NetDocs Mailbox](#); [Reagan Wyka](#); [Goodman, Lauren](#)
Subject: RE: Charming Charlie, 120 Regency Parkway, #154, Omaha, NE
Date: Monday, March 7, 2022 2:35:38 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[Regency-Charming Charlie--Complaint \(FILED\).pdf](#)

Mr. Hendershot,

I received your letter of today's date. I have conveyed your clients' offer to my client and will get back to you as soon as I can. In the meantime, as you requested, I am sending you a copy of the complaint we filed earlier today. Would you be willing to accept service on behalf of your clients?

Please note that our first count in the complaint is for unlawful detainer. Under Nebraska procedure, a hearing on such a claim must be held between ten and fourteen days after a summons is issued. We were about to request a summons when we received your letter, so no hearing has been set yet. In order to avoid your clients' having to hire local counsel to handle the hearing, would your clients be willing to stipulate to turning the premises over to my client?

Sincerely,

Michael T. Eversden
Attorney

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Fax: 402.952.6871
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From: Reagan Wyka <rwyka@hchlawyers.com>
Sent: Monday, March 7, 2022 2:22 PM
To: Eversden, Michael <meversden@mcgrathnorth.com>
Cc: Trey Hendershot <trey@hchlawyers.com>; Katie Cowart <kcowart@hchlawyers.com>; Karina Garza <kgarza@hchlawyers.com>; NetDocs Mailbox <netdocs@hchlawyers.com>
Subject: Charming Charlie, 120 Regency Parkway, #154, Omaha, NE

Good afternoon,

Please see the attached letter from Mr. Hendershot.

REAGAN WYKA

Legal Assistant





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IN THE DISTRICT COURT FOR DOUGLAS COUNTY, NEBRASKA

REGENCY COURT, L.L.C.,

Plaintiff,

vs.

CHARMING CHARLIE BIG RED, LLC and
CHARMING CHARLIE BRANDS, INC.,

Defendants.

CASE NO.: CI-22-1633

**STATE COURT NOTICE OF
REMOVAL OF CIVIL ACTION**

TO: Plaintiff, Regency Court, L.L.C., by and through its attorneys of record Mr. Michael T. Eversden and Ms. Lauren R. Goodman, McGrath North Mullin & Kratz, PC LLO First National Tower, Suite 3700, 1601 Dodge Street, Omaha, Nebraska, 68102

You are hereby notified that on April 6, 2022, a Notice of Removal of Civil Action was filed in the United States District Court for the District of Nebraska. A true and correct copy of the Notice of Removal of Civil Action is attached hereto. The Notice of Removal was filed in reference to Case No. CI-22-1633; *Regency Court, L.L.C. vs. Charming Charlie Big Red, LLC and Charming Charlie Brands, Inc.*, then pending in the District Court for Douglas County, Nebraska.

Respectfully submitted,
HENDERSHOT COWART, P.C.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2022, I electronically filed the foregoing Notice of Removal of Civil Action with the Clerk of Court for the District Court for Douglas County, Nebraska using the electronic case filing system of the court, and served a true and correct copy of this document on the following attorneys of record as indicated below:

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/s/ SIMON W. HENDERSHOT, III